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16 Attorneys for WAYMO LLC

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

19 WAYMO LLC,

20 CASE NO. 3:17-cv-00939-WHA

21 Plaintiff,

22 **PLAINTIFF WAYMO LLC'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL PARTIES' JOINT  
SUBMISSION REGARDING SHORT  
DESCRIPTIONS FOR ALLEGED TRADE  
SECRETS**

23 vs.

24 UBER TECHNOLOGIES, INC.;  
25 OTTOMOTTO LLC; OTTO TRUCKING  
26 LLC,

27 Defendants.

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1 Pursuant to Civil L.R. 7-11 and 79-5, Plaintiff Waymo LLC (“Waymo”) respectfully  
 2 requests to file under seal portions of the Second Amended Joint Proposed Pretrial Order.  
 3 Specifically, Waymo requests an order granting leave to file under seal the portions of the  
 4 documents as listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets	Highlighted portions	Waymo (green highlights)
Exhibit A to Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets	Entire Document	Waymo

11 **I. LEGAL STANDARD**

12 Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or  
 13 portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under  
 14 the law” (*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored  
 15 to seek sealing only of sealable material.” *Id.* In the context of non-dispositive motions, materials  
 16 may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good  
 17 cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City & Cnty. of Honolulu*,  
 18 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331  
 19 F.3d 1122, 1135, 1138 (9th Cir. 2003)).

20 **II. THE COURT SHOULD SEAL WAYMO’S CONFIDENTIAL INFORMATION**

21 The Court should seal portions of the Second Amended Joint Proposed Pretrial Order and  
 22 Exhibit A as identified by Waymo in the table above. Waymo seeks to file this information under seal  
 23 because it discloses Waymo’s trade secrets. *See* Declaration of Jonathan Francis (“Francis Decl.”)  
 24 ¶2. Courts have determined that trade secret information merits sealing. *Music Grp. Macao*  
 25 *Commercial Offshore Ltd. v. Foote*, No. 14-cv-03078, 2015 WL 3993147, at \*1 (N.D. Cal. June 30,  
 26 2015) (quoting *Kamakana*, 447 F.3d at 1179); *see also Brocade Commc’ns Sys., Inc. v. A10 Networks,*  
 27 *Inc.*, No. C 10-3428, 2013 WL 211115, at \*1, \*3 (N.D. Cal. Jan. 17, 2013) (granting request to seal  
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1 document that “consists entirely of descriptions of Brocade’s trade secrets”). Waymo seeks to seal  
 2 trade secrets that fit squarely within these categories. Francis Decl. ¶ 2. Waymo maintains this  
 3 information as a trade secret (*see* Dkt. 25-31) and ensures the information remains secret with strict  
 4 secrecy and security protocols (*see* Dkt. 25-47; Dkt. 25-49.). *See* Francis Decl. ¶ 2. Waymo has  
 5 narrowly tailored its requests to only information meriting sealing. *Id.* ¶ 3. In fact, both *Music Group*  
 6 and *Brocade* found the confidential information at issue in those cases met the heightened  
 7 “compelling reasons” standard for sealing. *Music Grp.*, 2015 WL 3993147, at \*1; *Brocade*, 2013 WL  
 8 211115, at \*1, \*3. The information that Waymo seeks to seal, therefore, also meets this heightened  
 9 standard. The disclosure of Waymo’s trade secret information would harm Waymo. Francis Decl.  
 10 ¶ 2. Moreover, the scope of information that Waymo is seeking to seal is consistent with other  
 11 administrative motions to seal that have already been granted by the Court in this case. (*See, e.g.*, Dkt.  
 12 416, 414, 406, 393, 392.) Thus, the Court should grant Waymo’s administrative motion to seal.

13 **III. CONCLUSION**

14 In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of the  
 15 above listed documents accompany this Administrative Motion. For the foregoing reasons,  
 16 Waymo respectfully requests that the Court grant Waymo’s Administrative Motion.

18 DATED: February 3, 2018

19 QUINN EMANUEL URQUHART & SULLIVAN,  
 LLP

20 By /s/ Charles Verhoeven

21 Charles Verhoeven  
 22 Attorneys for WAYMO LLC

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16 Attorneys for WAYMO LLC

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

19 WAYMO LLC,

20 CASE NO. 3:17-cv-00939-WHA

21 Plaintiff,

22 vs.

23 UBER TECHNOLOGIES, INC.;  
24 OTTOMOTTO LLC; OTTO TRUCKING  
25 LLC,

26 **DECLARATION OF JONATHAN  
27 FRANCIS IN SUPPORT OF PLAINTIFF  
28 WAYMO LLC'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
PARTIES' JOINT SUBMISSION  
REGARDING SHORT DESCRIPTIONS  
FOR ALLEGED TRADE SECRETS**

29 Defendants.

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1 I, Jonathan Francis, declare as follows:

2       1. I am an attorney licensed to practice in the State of California and am admitted to  
 3 practice before this Court. I am an associate at the law firm Quinn Emanuel Urquhart & Sullivan,  
 4 LLP, counsel for the Plaintiff Waymo LLC (“Waymo”). I have personal knowledge of the matters set  
 5 forth in this Declaration, and if called as a witness I would testify competently to those matters.

6       I make this declaration in support of Administrative Motion to File Under Seal Parties’  
 7 Joint Submission Regarding Short Descriptions for Alleged Trade Secrets (“Administrative  
 8 Motion”), filed concurrently herewith. The Administrative Motion seeks an order sealing the  
 9 following materials, also filed concurrently herewith:

Document	Portions to Be Filed Under Seal	Designating Party
Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets	Highlighted portions	Waymo (green highlights)
Exhibit A to Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets	Entire Document	Waymo

16       2. Specifically, the green highlighted portions of the Parties’ Joint Submission Regarding  
 17 Short Descriptions for Alleged Trade Secrets and the entirety of Exhibit A thereto, contain or refer to  
 18 Waymo’s trade secrets, which Waymo seeks to seal. The information Waymo seeks to seal includes  
 19 the confidential design and functionality of Waymo’s proprietary autonomous vehicle system,  
 20 including its LiDAR designs, which Waymo maintains as secret. I understand that these trade secrets  
 21 are maintained as secret by Waymo (Dkt. 25-47) and that the trade secrets are valuable to Waymo’s  
 22 business (Dkt. 25-31). The public disclosure of this information would give Waymo’s competitors  
 23 access to descriptions of the functionality or features of Waymo’s autonomous vehicle system. If such  
 24 information were made public, I understand that Waymo’s competitive standing would be  
 25 significantly harmed.

26       3. Waymo’s request to seal is narrowly tailored to those portions of the Parties’ Joint  
 27 Submission Regarding Short Descriptions for Alleged Trade Secrets and Exhibit A thereto that merit  
 28 sealing.

1 I declare under penalty of perjury under the laws of the State of California and the United  
2 States of America that the foregoing is true and correct, and that this declaration was executed in San  
3 Francisco, California, on February 3, 2018.

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By /s/ Jonathan Francis

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Jonathan Francis

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Attorneys for WAYMO LLC

8

**SIGNATURE ATTESTATION**

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Pursuant to Local Rule 5-1(i)(3), I attest under penalty of perjury that concurrence in the  
filing of this document has been obtained from Jonathan Francis.

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/s/ Charles K. Verhoeven

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Charles K. Verhoeven

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

10 WAYMO LLC,

CASE NO. 3:17-cv-00939-WHA

11 Plaintiff,

12 vs.

13 UBER TECHNOLOGIES, INC.;  
14 OTTOMOTTO LLC; OTTO TRUCKING  
15 LLC,

16 Defendants.

**[PROPOSED] ORDER GRANTING  
PLAINTIFF WAYMO LLC'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL PARTIES' JOINT  
SUBMISSION REGARDING SHORT  
DESCRIPTIONS FOR ALLEGED TRADE  
SECRETS**

1 Plaintiff Waymo LLC (“Waymo”) has filed an Administrative Motion to File Under Seal  
2 Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets  
3 (“Administrative Motion”).

4 Having considered the Administrative Motion, and good cause to seal having been shown,  
5 the Court **GRANTS** Waymo’s Administrative Motion and **ORDERS** sealed the documents listed  
6 below:

Document	Portions to Be Filed Under Seal
Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets	Highlighted Portions
Exhibit A to Parties’ Joint Submission Regarding Short Descriptions for Alleged Trade Secrets	Entire Document

12 **IT IS SO ORDERED.**

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14 Dated: \_\_\_\_\_, 2018

15 \_\_\_\_\_  
16 HON. WILLIAM ALSUP  
United States District Court Judge

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1 [COUNSEL LISTED ON SIGNATURE PAGE]  
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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 v.

16 UBER TECHNOLOGIES, INC.,  
17 OTTOMOTTO LLC; OTTO TRUCKING  
18 LLC,

19 Defendants.

Case No. 3:17-cv-00939-WHA

**PARTIES' JOINT SUBMISSION  
REGARDING SHORT DESCRIPTIONS  
FOR ALLEGED TRADE SECRETS**

Judge: The Honorable William Alsup

Trial Date: February 5, 2018

23 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**  
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1 Plaintiff Waymo LLC and Defendants Uber Technologies, Inc. and Ottomotto LLC  
 2 (collectively, “Uber”) hereby inform the Court that the parties met and conferred concerning a list  
 3 of asserted trade secrets to be provided to the jury, including the “subject matter” of the alleged  
 4 trade secrets. (Dkt. 2492.) The parties agreed on short descriptions that can be part of the public  
 5 record for seven of the eight alleged trade secrets, but were not able to reach agreement on the  
 6 description for Alleged Trade Secret (“ATS”) No. 7. In view of that disagreement, the parties’  
 7 positions are as follows.

8 **Waymo’s Position**

9 Waymo requests that the jury binder simply omit the short descriptions altogether and  
 10 refer to the asserted trade secrets by number as originally proposed by the Court (Dkt. 2492), in  
 11 light of the parties’ unfortunate failure to agree on short descriptions for all asserted trade  
 12 secrets. For ATS 7, Waymo proposed the short description, “laser diode positioning,” complying  
 13 with the Court’s guidance that the descriptions be non-argumentative and broad enough to be  
 14 spoken in Court. (1/30/17 H’rg Tr. at 25:25-26:7.) Uber’s sole proposal does not comply with  
 15 the Court’s guidance because it discloses part of the substance of the asserted trade secret. Uber  
 16 refuses to consider any alternatives that do not include the word “[REDACTED]” or a  
 17 synonym. While Uber wants to argue that the concept of “[REDACTED]” in LIDAR  
 18 systems is generally known, these issues are for the jury to decide, not something to litigate in the  
 19 context of the parties’ effort to agree on the contents of the jury binder. Waymo engaged  
 20 repeatedly to seek agreement on this topic without troubling the Court. Uber’s tactical choice to  
 21 use this process to argue the merits of the trade secret rather than heed the guidance of the Court  
 22 should not be rewarded. Waymo’s formulation or the Court’s original version that omits short  
 23 descriptions are both acceptable to Waymo.

24 **Uber’s Position**

25 Uber proposes the short, easy-to-understand description of “[REDACTED]” for  
 26 ATS 7. “[REDACTED]” will allow the jury to easily understand which trade secret is  
 27 being discussed without disclosing Waymo’s alleged trade secret. Uber’s proposal describes the  
 28 “subject matter” of the alleged trade secret (Dkt. 2492), without disclosing Waymo’s claimed

1 trade secret of a *specific* [REDACTED]. Waymo has conceded that it is no longer  
 2 claiming the general concept of [REDACTED] as its trade secret. In its August 1, 2017  
 3 Notice Regarding Trade Secret Narrowing, Waymo narrowed ATS 7 *from* a “[REDACTED]  
 4 [REDACTED],” i.e., the general  
 5 concept of [REDACTED], (Dkt. 25-7 at 6) *to* the specific “[REDACTED]  
 6 [REDACTED].” (Dkts. 1110-1, 335-4 at 4.) Moreover, as the Court acknowledged  
 7 (on the public record), there are “*only* three possibilities” for “diodes on printed circuit boards in a  
 8 LiDAR transmit block”—“overhang, underhang, or exactly flush.” (Dkt. 433 at 13 (public PI  
 9 order).) The April 12, 2017 technology tutorial included public discussion regarding the general  
 10 concept of [REDACTED]. (4/12/17 Hr’g Tr. at 59-60.) The Court should use language  
 11 that a jury can easily understand—like “[REDACTED]”—rather than that which would  
 12 confuse and unnecessarily complicate the alleged trade secret (such as the “laser diode  
 13 positioning” proposed by Waymo, which also describes the subject matter of ATS 13 and 14).

14 **Joint Conclusion**

15 The parties attach as **Exhibit A** the list of asserted trade secrets, including the agreed-upon  
 16 short descriptions and two proposals for ATS 7.<sup>1</sup>

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28 <sup>1</sup> The parties will also email the Court a Microsoft Word version of Exhibit A.

1 Dated: February 3, 2018

MORRISON & FOERSTER LLP

2 By: */s/ Michael A. Jacobs*  
3 MICHAEL A. JACOBS

4 Attorneys for Defendants  
5 UBER TECHNOLOGIES, INC.  
and OTTOMOTTO LLC

6

7 Dated: February 3, 2018

QUINN EMANUEL URQUHART & SULLIVAN, LLP

8

9 By: */s/ Charles K. Verhoeven*  
10 CHARLES K. VERHOEVEN

11 Attorneys for Plaintiff  
12 WAYMO LLC

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17 Pursuant to stipulation, **IT IS SO ORDERED.**

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19 DATED: \_\_\_\_\_, 2018

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## ATTESTATION OF E-FILED SIGNATURE

I, Charles K. Verhoeven, am the ECF User whose ID and password are being used to file this Joint Submission Regarding Short Descriptions for Alleged Trade Secrets. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Michael A. Jacobs has concurred in this filing.

Dated: February 3, 2018

/s/ *Charles K. Verhoeven*

CHARLES K. VERHOEVEN